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IN THE

Supreme Court of the United States

SEPTEMBER TERM, 1966

No. 414

ALPHONSO W. KYLES,

Petitioner,

v.

PAUL H. PRESTON,
Superintendent, District of Columbia Jail, and
LUKE C. MOORE,
United States Marshal for the District of Columbia,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Alphonso W. Kyles, prays that a writ of certiorari issue to review the summary judgment of affirmance, without opinion, of the Circuit Court of Appeals for the District of Columbia Circuit.

JUDGMENT BELOW

The judgment below was entered without opinion and is unreported in either the District of Columbia Appeals cases or the Federal Reporter. The judgment of the Cir-

cuit Court was entered on May 9, 1966 (Appendix, p. 14) and reconsideration by the said Court en banc denied on June 20, 1966 (Appendix, p. 15) thereby affirming the judgment of the District Court for the District of Columbia entered on April 4, 1966 (Original Record), upon the Memorandum Opinion (Original Record) and Findings of Fact and Conclusions of Law (Original Record) of the trial court.

JURISDICTION

The jurisdiction of this court is invoked under Title 28 U.S.C. sec. 1257 (3).

QUESTIONS PRESENTED

This cause presents the following questions:

1. Is the constitutional right against double jeopardy, guaranteed by the Fifth Amendment of the Federal Constitution, of such fundamental characteristic in the law as to proscribe state statutes from encroachment by reason of the Fourteenth Amendment?

2. Can Federal Extradition be lawfully carried out against an accused where the admitted factual circumstances upon which the criminal indictment of the demanding state is founded are made to appear of record in a habeas corpus proceeding in the asylum state and such facts disclose that the state action contravenes proscription of the Federal Constitution?

FEDERAL CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent portion of the Fifth Amendment to the Federal Constitution:

> * * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; * * * nor be deprived of life, liberty, or property without due process of law * * *.

the Fourteenth Amendment:

> * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 52, section 13 of the Annotated Code of Maryland, in part, which confers misdemeanor jurisdiction on Trial Magistrates of the Peoples Court of that state:

> The several trial magistrates of the State of Maryland are hereby vested with jurisdiction to hear, try and determine all cases involving the charge of any offense, crime or misdemeanor, not punishable by confinement in the penitentiary * * *.

Section 13 (b) of the said Article, in part, providing for appeal from trials before the Trial Magistrates:

> If after trial before the trial magistrate either party shall feel aggrieved by his judgment there shall be a right of appeal within ten days to the circuit court for the county in which the alleged offense is charged to have been committed * * *.

Section 15 of the said Article which makes the appeal authorized by section 13 (b) a de novo trial:

> All appeals from judgments of trial magistrates taken in accordance with provisions of section 13 shall be heard and tried de novo * * *.

The misdemeanor offense with which petitioner was originally charged, Article 27, sec. 555A:

> It is unlawful for any person to make use of telephone facilities or equipment (1) for an anonymous call or calls if in a manner reasonably to be expected to annoy, abuse, torment, harass, or embarrass one or more persons; (2) for repeated calls, if with intent to annoy, abuse, torment, harass, or embarrass one or more persons; or (3) for any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent. Any person violating any one of the provisions of this section is guilty of a misdemeanor, and upon conviction thereof, shall

be subject to a fine of not more than $500.00 or to imprisonment for not more than twelve months, or both, in the discretion of the court.

The Federal Extradition Statute, Title 18 U.S.C. sec. 3182:

> Whenever the executive authority of any state or Territory demands any person as a fugitive from justice, or the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of arrest, the prisoner may be discharged.

STATEMENT

There is no dispute of fact involved in this cause.

Extradition proceedings against petitioner were commenced in the District of Columbia, upon an indictment issuing from the State of Maryland, charging petitioner with the crime of "Escape" from a penal institution in Maryland. Petitioner was taken into custody at his home in the District of Columbia. Petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of Columbia, challenging the legality of his detention on the grounds that the indictment which lay at the foundation of the extradition proceedings did not in fact charge a crime, in that the pro forma "Escape" assertion of the indictment was founded on a confinement which itself was unlawful and the order of the

Maryland Court committing him thereto was a nullity and void, in that, petitioner having been previously tried, acquitted and discharged of the offense by a Maryland Court of competent jurisdiction, the Federal constitution proscribed the jurisdiction of a second Maryland court which thereafter, without any claim of error in the first trial, retried, de novo, the same criminal charge, convicted and imprisoned petitioner and that the proffered indictment charging him with an escape from such unlawful imprisonment did not in fact charge a crime where no breach of the peace was involved.

The Federal District court characterized the issue raised as "* * * interesting and important questions of constitutional law * * *" but declined to express an opinion thereon, ruling that "* * * under the circumstances of this case that argument should more properly be addressed to the courts of Maryland" (Original Record, Memorandum of Court, filed April 1, 1966). The record before the District Court disclosed that petitioner, while confined in Maryland, had raised the constitutional question before the Maryland Courts: the Circuit Court for Montgomery County, Maryland (Original Record, Exhibit B to Petition for Writ of Habeas Corpus); in post conviction proceedings before the Circuit Court of Maryland (Original Record, Exhibit B to Petition for Writ of Habeas Corpus) and the Court of Appeals of Maryland (Original Record, Exhibit B to Petition for Writ of Habeas Corpus), which court denied petitioner any relief under the construction of the Federal Constitutional by the Maryland courts that "* * * the double jeopardy protection of the Fifth Amendment is not transmitted to the States through the Fourteenth Amendment." (Original Record, Exhibit C to Petition for Writ of Habeas Corpus).

All relevant facts involved in the cause are admitted and were filed of record before the Federal District Court: On September 22, 1965, by information No. 2502-65, captioned State of Maryland v. Alphonso Westinghouse Kyles,

petitioner was criminally charged in the Peoples Court of Montgomery County, Maryland with a misdemeanor, to wit: "making annoying and abusive telephone calls" (Original Record, Exhibit B to Petition for Writ of Habeas Corpus). Such criminal charge is properly within the criminal jurisdiction of the Trial Magistrate of the Peoples Court (Original Record, Memorandum of Points and Authorities, p. 1). Petitioner was duly arraigned upon such charges, tried by the court, acquitted and discharged (Original Record, Exhibit B to Petition for Writ of Habeas Corpus). Thereafter, on October 5, 1965, one of the Assistant Prosecutors of that state filed an "appeal" of the criminal matter to the Circuit Court of Montgomery County, Maryland (Original Record, Exhibit B to Petition for Writ of Habeas Corpus), in which court the same criminal charge, without any claim of error in the first trial, was rescheduled for a de novo trial before a judge of the Circuit Court. Despite petitioner's plea of former jeopardy (Original Record, Exhibit B to Petition for Writ of Habeas Corpus), the Circuit Court proceeded to retry, de novo, the same criminal charge, entered a verdict and judgment of guilty and sentenced petitioner to "* * * be confined in the Maryland House of Correction for a period of Eight (8) months" (Original Record, Exhibit B to Petition for Writ of Habeas Corpus), and for which he was committed. While confined in the minimum security institution, petitioner applied for relief on the Constitutional grounds which the court denied (Original Record, Exhibit C to Petition for Writ of Habeas Corpus), and his application for relief on the Constitutional grounds made to the Court of Appeals of Maryland was also denied (Original Record, Exhibit D to Petition for Writ of Habeas Corpus). Thereafter, "* * * while a prisoner at the state institution, he absented himself without permission and came to the District of Columbia where he surrendered himself to local authorities." (Original Record, Memorandum of District Court, filed April 1, 1966). The indictment for escape was predicated thereon and extradition proceedings commenced thereunder.

REASONS FOR GRANTING WRIT

1. This Court has recently felt impelled to clarify Federal Constitutional rights of citizens of the United States guaranteed by the Bill of Rights Amendments and made applicable to state actions by reason of and through the Fourteenth Amendment, e.g., The First Amendment – *New York Times v. Sullivan* (1964) 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686; The Fourth Amendment – *Mapp v. Ohio* (1961) 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081; *Kerr v. California* (1963) 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed. 2d 726; The Fifth Amendment, self incrimination, *Malloy v. Hogan* (1964) 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653; right to counsel, *Gideon v. Wainwright* (1963) 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799; Sixth Amendment, confrontation clause, *Pointer v. Texas* (1965) 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923, among other decision of this court. The guidelines as to double jeopardy proceedings in state actions as announced by this court in *Palko v. Connecticut* (1937) 302 U.S. 319, 58 S.Ct. 149, 82 L. Ed. 288 has received such divergent and conflicting interpretations by legislatures, state court and federal district courts that the Constitutional right – or lack of recognition of such right – is made to depend upon whether the claim is asserted in a federal or state court and differs in standards or application from state to state viz: in a proceeding involving the question of application of the Fifth Amendment proscription against double jeopardy in the state of New York it is held that the proscription applies to state actions, *United States ex rel. Hetenyl v. Wilking* (CA 4 1965) 348 F.2d 844, cert. denied, 375 U.S. 980, 11 L. Ed. 3d 426, 84 S. Ct. 495, while, conversely, in the state of Maryland the rule is that

> "* * * the double jeopardy protection of the Fifth Amendment is not transmitted to the States through the Fourteenth Amendment."

see: *Robb v. Maryland* (1947) 190 Md. 641; *Austin v. Director* (1964) 237 Md. 314.

The Maryland claim of completely unfettered state right to retry a criminal case without regard to Federal Constitutional prohibitions, typically asserted in *State v. Robb*, supra, stems from a misreading of *Palko v. Connecticut* (1937) 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288. No such broad exclusion is contained in the *Palko* decision as the court expressly limited its decision to the statute and facts that were then before the court, page 328:

> What the answer would have to be if the state were permitted after a trial free from error to try the accused over again or to bring another case against him we have no occasion to consider. We deal with the statute before us and no other. The state is not attempting to wear the accused out by a multitude of cases with accumulated trials. It asks no more than this, that the case against him shall go on until there shall be a trial free from the corrosion of substantial legal error.

The *Palko* decision expressly recognizes that some limitation against a state retrial of the same cause in its reference at page 326 to:

> * * * privileges and immunities that have been taken over from the earlier articles of the federal bill of rights and brought within the Fourteenth Amendment by a process of absorption * * *.

and suggests that the "line of demarcation" as to when absorption should be held to exist could be determined in answering the following questions, page 328:

> Is that kind of double jeopardy to which the statute subjected him a hardship so acute and shocking that our polity will not endure it?
>
> Does it violate those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions?

Mr. Justice Black in *Bartkus v. Illinois* (1959) 359 U.S. 121, 79 S. Ct. 676, said that the idea that one trial and one punishment were enough was brought to this country by the earliest settlers as part of their heritage of freedom and it has been recognized here as fundamental again and again, and Chief Justice Vinson in *Brock v. State of North*

Carolina (1953) 344 U.S. 424, 73 S. Ct. 349, "the basic idea is part of our American concept of fundamental fairness."

Retrial of a criminal cause merely to afford State prosecution a second chance to convict violates the concept of fundamental fairness. Mr. Justice Frankfurter in a separate concurring opinion in *State of Louisiana ex rel. Francis v. Resweber* (1947) 329 U.S. 459 at 469, 67 S. Ct. at 379, ruled:

> A State may offend such a principle of justice by brutal subjection of an individual to successive retrials on a charge on which he has been acquitted.

and in *Brock v. State of North Carolina* (1953) 344 U.S. at 429, 73 S. Ct. at 351:

> A State falls short of its obligation when it callously subjects an individual to successive retrials on a charge on which he has been acquitted or prevents a trial from proceeding to a termination in favor of the accused merely in order to allow a prosecutor who has been incompetent or casual or even ineffective to see if he cannot do better a second time.

No reason exists or existed for retrial of petitioner except to allow the prosecution, after petitioner's acquittal, a second chance or a "chance to do better a second time." Moreover, in practice and under the case law of Maryland no other reason is required, *Johnson v. State*, 191 Md. 447, 62 A.2d 249.

Whether the Federal Standard of Due Process as set forth in the Fifth Amendment, the Basic Core Standard of absorption or Fundamental Fairness Standard be applied the State's action cannot be squared with Federal Constitutional limitations on its power to reprosecute petitioner for the same crime. If the double jeopardy standards of the Bill of Rights do not enunciate our "American concept of fundamental fairness" then we have NO STANDARD and continual retrials until conviction is obtained is legislatively permissible by states. Such blatant confusion of

fundamental fairness concept could find no basis in logic or reason and has already been rejected. In *Malloy v. Hogan*, supra, in holding a uniformity of standard as to self-incrimination under the Fifth Amendment the court said:

> It would be incongruous to have different standards determine the validity of claim of privilege * * * depending on whether the claim was asserted in a state or federal court.

Petitioner submits that the Fifth Amendment proscription against double jeopardy and its operation to state actions through the Fourteenth Amendment ought to be redefined so as to eliminate the confusion which has eventuated in construction of the *Palko* decision and the guidelines there enunciated, and the application thereof to the instant cause would render the judgment of conviction of the petitioner in the second Maryland trial *coram non judice*. *Philadelphia W. & B. R. Co. v. Trimble* 10 Wall. (U.S.) 367, 19 L. Ed. 948; *D'Arcy v. Ketchum*, 11 How. (U.S.) 165, 13 L. Ed. 648, and ipso facto void *Martin v. Hunter*, 1 Wheat. (U.S.) 304, 4 L. Ed. 97, *Valley v. Northern F. and M. Ins. Co.*, 254 U.S. 348, 65 L. Ed. 297, 41 S. Ct. 116. The action of a court in overruling a plea of former jeopardy is subject to collateral attack under a writ of habeas corpus. *Re Neilson*, 131 U.S. 176, 33 L. Ed. 118, 9 S.Ct. 672, *Clawan v. Rives*, 70 App. D.C. 107, 104 F.2d 240, 122 ALR 1463.

2. In the posture of the admitted and undisputed facts before the court in the habeas corpus proceedings the imprisonment from which petitioner was alleged to have escaped was unassailably unlawful and his commitment thereto proscribed by the Constitution of the United States.

> The very foundation of the crime of escape is the lawful confinement of the prisoner; and therefore it is a general and well-established rule that when the imprisonment is unlawful, and is itself a crime against the law, the reason which makes flight from prison an offense does not exist. In such case the

> right to liberty is absolute, and he who regains it is not guilty of the technical offense of escape. 10 R. C.L. p. 581, sec. 5.

To the same effect see: *State of Ohio v. Ferguson* (1955) 132 N.E.2d 884; *Miers v. State*, 34 Tex. Cr. R. 161, 29 S.W. 1074; *State v. Leach*, 7 Conn. 452; *People v. Ah Teung*, 92 Cal. 421, 29 P. 577, 15 LRA 190. In the *Ah Teung* case, supra, the view of absolute right to liberty in such circumstances was held "* * * to be the one which is adopted by the courts, without dissent from any." Such is the law of Maryland. In *Sugarman v. State* (1937) 173 Md. 52, at page 57, 195 A.2d at page 326, that court held:

> The authorities seem in accord that one illegally arrested may use any reasonable means to effect his escape, even to the extent of using such force as is reasonably necessary.

Nor is there anything in the Maryland statute which makes it a crime to regain one's liberty by peaceful means from an unlawful imprisonment or detention. What the statute makes a crime against the laws of that State is the act of a person in effecting an escape where he is "* * * legally detained and confined * * *," Article 27, Sec. 139 of the Annotated Code of Maryland, 1957, provides:

> If any offender or person legally detained and confined in the penitentiary, or jail, or house of correction, or reformatory, or station house, or any other place of confinement in this state, shall escape, on conviction thereof * * *.

It is realized that even in the exercise of an admitted right one may employ means which make the resulting act illegal, e.g., excessive force in self-defense, force and violence in jail breaking, etc. What petitioner did, however, entailed no breach of the peace nor the exercise of any force or violence. Such appears in the Findings of Fact and Conclusion of Law as well as in the Memorandum Opinion of the trial court:

> While a prisoner at a state institution, he absented himself without permission and came to the District

> of Columbia where he surrendered himself to the local authorities. (Original Record)
>
> * * * he left said camp without permission of the prison officials or the courts of the State of Maryland and came to the District of Columbia. (Original Record)

When it appears on the face of the record or is shown by facts not inconsistent with the record that the pro forma assertions of the indictment do not *in fact*, *In Re Nagel*, 135 U.S. 1, 10 S. Ct. 658, or *validly*, *Richards v. Matthews* (1953) 93 U.S. App. D.C. 70, 207 F.2d 227, or *substantially*, *Moncrief v. Anderson* (1964) 342 F.2d 902, charge a crime against the laws of the demanding state, there exists no legal basis for extradition. In making such determination in extradition proceedings, this Court in *Pierce v. Creecy*, 210 U.S. 387, 52 L. Ed. 113, 29 S. Ct. Rep. 714, set forth the standard to be employed:

> The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, however inartificially, charged with a crime in the State from which he has fled. * * * To determine this the court will look beyond the mere sufficiency of the complaint as a criminal pleading.

In *Cassis v. Fair* (1944) Sup. Ct. App. W. Va. 29 S.E.2d 245, in considering the challenge of the legal sufficiency of an indictment to charge the crime of escape, the court ruled, p. 249:

> Another question as to the validity of these proceedings requires consideration, namely, whether the indictment which lies at the foundation of extradition charges substantially against the accused any crime. It is not only the right, but the duty of the proper authorities of the asylum state, executive and judicial, to determine whether the accused is, in fact, charged with a crime in the demanding state. (citing cases) * * * To be subject to extradition the accused must be charged with a crime in the demanding state, and this means that the charge standing against him must legally constitute a crime.

Petitioner here, as in *In Re Nagel,* supra, presented to the court a constitutional issue which is dispositive as to his right based on an admitted factual situation. The court refused to rule upon the issue raised and, in effect, directed that the same be raised in the courts of Maryland, despite the fact that Petitioner had already been denied relief by the highest court of that State. Any further application to the courts of Maryland would be an exercise in futility, or as stated in *United States ex rel. Stevens v. McCloskey* (1965) CA 2, 345 F.2d 305:

> To require a needless, purely formal application for state court relief would * * * not only confine petitioner to a revolving door process leading no where, but invite the reproach that it is the prisoner rather than the state remedy that is being exhausted.

The dispositive issue as to whether the indictment in fact charged a crime against the laws of the state of Maryland in the extradition proceedings would not appear to be a meaningful matter to attempt to raise before the Federal District Court of Maryland after the extradition of petitioner had become a fact accomplished. Nor is petitioner barred from federal habeas corpus relief because he failed to timely seek certiorari in the United States Supreme Court from the adverse state decision. *Fay v. Noia* (1963) 372 U.S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837. Thus petitioner has been accorded the form of habeas corpus proceeding but denied the Constitutional substance of the rights which the form is designed to effectuate.

Petitioner respectfully requests that a writ of certiorari issue herein and the fundamental questions which it presents be assumed by this Court.

Respectfully submitted,

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[Filed May 9, 1965]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,096 September Term, 1965
Habeas Corpus 135-66

Alphonso W. Kyles,

Appellant,

v.

Paul H. Preston, Superintendent,
District of Columbia Jail, et al.,

Appellees.

Before: Fahy, Burger and Tamm,
Circuit Judges, in Chambers.

ORDER

On consideration of appellant's motion for summary reversal, of appellees' opposition thereto and of appellees' motion to dismiss or in the alternative for summary affirmance and of appellant's opposition thereto, it is

ORDERED by the court that appellant's motion be denied, and it is

FURTHER ORDERED by the Court that appellees' motion for summary affirmance be granted, and the order of the District Court is affirmed.

Per Curiam.

Circuit Judge Fahy would also deny appellees' motion.

[Filed June 20, 1966]

* * *

Before: Bazelon, Chief Judge; and Fahy, Danaher, Burger, Wright, McGowan, Tamm, and Leventhal, Circuit Judges, in Chambers.

ORDER

On consideration of appellant's petition for reconsideration en banc, it is

ORDERED by the court en banc that appellant's aforesaid petition is denied.

Per Curiam.

Circuit Judges Fahy and Wright would grant appellant's aforesaid petition.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 414

ALPHONSO W. KYLES, PETITIONER

v.

PAUL H. PRESTON, SUPERINTENDENT, DISTRICT OF COLUMBIA JAIL, and LUKE C. MOORE, UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

Petitioner seeks review of an order of the Court of Appeals for the District of Columbia affirming the district court's denial of a petition for a writ of habeas corpus challenging petitioner's extradition to Maryland.

Petitioner had been ordered extradited to Maryland on March 30, 1966, by the Chief Judge of the District of Columbia acting in his executive capacity

pursuant to 23 D.C. Code 401. The extradition was ordered under a Maryland indictment which charged that on February 23, 1966, petitioner unlawfully escaped from the Eastern Correctional Camp in Maryland. At the hearing before the Chief Judge, petitioner admitted that he was the person named in the indictment and that he had left the Maryland correctional camp without permission of the authorities. He challenged the validity of the indictment for escape on the ground that the conviction under which he was being held at the time of his escape had violated his rights against double jeopardy. This contention was reiterated in a petition for a writ of habeas corpus, considered after the extradition order had been issued. Judge Gasch ordered petitioner turned over to the State of Maryland, finding that petioner was substantially charged in that State with the crime of escaping prison and that he was a fugitive from justice. The Court of Appeals for the District of Columbia affirmed. Petitioner has been released on bond pending action on his present application.

Petitioner argues that the District of Columbia court, in the extradition proceeding, should have decided both that his underlying conviction was unconstitutional and that his act of departing from the camp without use of violence would not constitute the crime of escape under Maryland law in light of the alleged invalidity of the underlying conviction. These questions, however, are not for the District of Columbia to decide. Even if it be assumed that petitioner's attack on his original conviction might provide a

defense to the charge of escape from prison, the claim would have to be raised on the trial of the Maryland charge and adjudicated in the Maryland courts. See *Sweeney* v. *Woodall*, 344 U.S. 86 where this Court held that a claim that conditions of incarceration in the demanding State amounted to cruel and unusual punishment was not a proper subject of hearing in the extradition proceeding. The Court said, 344 U.S. at pp. 89-90:

> By resort to a form of "self help", respondent has changed his status from that of a prisoner of Alabama to that of a fugitive from Alabama. But this should not affect the authority of the Alabama courts to determine the validity of his imprisonment in Alabama. The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; * * *

The only issues in the extradition proceeding were: (1) the identity of the person; (2) whether he had been substantially charged with a crime in the demanding State; and (3) whether he was a fugitive from justice, *i.e.*, whether he had been present in the demanding State when the crime was committed. *Bruzaud* v. *Matthews*, 207 F.2d 25, 26 (C.A.D.C.). These criteria were clearly met in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

AUGUST 1966

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